(1)

Supreme Court, U.S.
FILED
06-565 AUG 7 - 2006
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

In re ANDREW J. JOHNSON

On Petition For An Extraordinary Writ
Of Habeas Corpus
To The Supreme Court, State Wyoming

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

Andrew J. Johnson
P. O. Box 877
Haskell, TX 79521
(940) 864-5694

QUESTIONS PRESENTED

Can a state court deprive any person of life, liberty, or property, without due process of law or deny to any person within its jurisdiction the equal protection of the laws

LIST PARTIES

[x] All parties appear in the caption of the case of the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to proceedings in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR AN EXTRAORDINARY WRIT
OF HABEAS CORPUS

Petitioner respectfully prays that an extraordinary writ of habeas corpus issue to review the judgment below.

OPINION BELOW

[ ] For cases from **federal courts:**

The opinion of the United State Court of Appeal appears at Appendix _____ to the petition and is

[ ] report at _____; or

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the United State Court district court appears at Appendix _____ to the petition and is

[ ] report at _____; or

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

[x] For cases from **state courts:**

The opinion of the highest court to review the merits at Appendix A to the petition and is

[ ] report at _____; or,

[x] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the First Judicial District court appears at Appendix B to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or

[x] is unpublished

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No. petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the Petition for writ of certiorari was granted to and including _____ (date) on _____date in Application No. _____ A____.

The jurisdiction of this Court is invoked under 28 U.S.C §1254(1)

[x] For cases from **state courts:**

The date on which the highest states court decided my case was May 16, 2006. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was hereafter denied on the following date:_____, and a copy of the or denying rehearing appears at Appendix ____.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date)on _____ (date) in Application No. ____A___.

Mr. Johnson shows how his writ will be in aid of the Court's appellate jurisdiction as follows: The State Supreme Court of Wyoming has decided an important question of federal law that has not been, but should be, settled by this

Court, or has decided an important federal question in a way that conflicts with relevant decision of this Court. Rule 10 (c), and exceptional circumstance warrant the exercise of the Court's discretionary power, and adequate relief cannot be sought in any other form or any other court. Since Mr. Johnson had filed his petition for writ of habeas corpus in the State Supreme Court of Wyoming last resort.

Further, Mr. Johnson states the reason why he did not make the application to the district court in which he was held: It was due to the order of the district court that Mr. Johnson may not file any future petition for a writ of habeas corpus in the district court relating to his conviction for aggravated burglary and first-degree sexual assault, and being adjudged a habitual criminal; Case Docket No. 99-CV-15-D.

The jurisdiction of this Court is invoked under 28 U.S.C §2254(a).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

This case involves Amendment XIV to the United States constitution, which provides

Section 1. All person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce and law which shall abridge the privileges or immunities of citizen of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provision of this article.

The Amendment is enforced by title 42 Section 1983,United States Code:

Every person who, under color of any statute ordinance, regulation, custom, or usage of any State, Territory, or the District Columbia, subjects, or cause to be subjected, any citizen of the United States or other person within the jurisdiction thereof the deprivation of any rights, privileges, or immunities secured by the Constitution and law shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section any Act of Congress applicable exclusively to the District of Columbia shall be considered to be statute of the District of Columbia.

STATEMENT OF CASE

On June 11, 1989, Johnson was arrested and charged with aggravated burglary and first degree sexual assault (App. L). In September 27, 1989, a jury convicted Johnson on both charges. On October 25, 1989, Johnson was sentence to the Wyoming Penitentiary (App. C). Johnson timely appealed the conviction to Wyoming Supreme Court. On March 4, 1991, the Wyoming Supreme Court affirmed the conviction. See State v. Johnson, 806 P.2d 1282 Wyo. 1991.

On January 9, 2006, Johnson filed a Petition for Writ of Habeas Corpus. App. D.

On January 31, 2006, Johnson filed a Request for Service by Another Person. App. E.

On March 23, 2006, the District Court for the First Judicial District, Laramie County, dismissed the Writ of habeas. App. B.

On May 1 2006, Johnson filed a Petition for Writ of Habeas/w Memorandum in support of petition for Writ of Habeas Corpus to the Wyoming Supreme. App. F.

On May 9, 2006, the Respondent filed a Motion to Dismiss Petition for Writ of Habeas Corpus. App. G.

On May 15, 2006, Johnson sent his Reply, Petition for Writ of Habeas Corpus. App. H.

On May 16, 2006, the Wyoming Supreme Court entered its Order Denying Petition for Writ of Habeas Corpus. App. A.

On May 24, 2006, the Clerk of the Wyoming Supreme Court sent a letter to Mr. Johnson informing him that his Reply that the Court determined that it would not have changed the outcome of his petition. Therefore, the order denying petition for writ of habeas corpus filed on May 16, 2006, stand as the Court's decision in this matter. App. I.

REASONS FOR GRANTING THE PETITION

I.

THE QUESTION PRESENTED IS CAN A STATE COURT DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITH OUT DUE PROCESS OF LAW OR DENY ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTIONOF THE LAWS

The supreme court to the United States, in a recent case, say: "It is difficult to see why a conviction and punishment under unconstitutional rights than an unconstitutional conviction under a valid law," [In re Nielson, 313 U.S. 183, 9 Sup. Ct. 674.] Under this rule, if a court errs in assuming jurisdiction where it does not possess it, or interpreting a constitutional immunity or right, the jurisdiction over him ceases, and its act, not simply erroneous, but void.

The state's expert witness Jalene A. Griffin, Forensic Serologist of the State Crime Laboratory, testified about her Report. See (A copy of the State v. Johnson Wyoming District Court first Judicial District, Docket No. 19-373; Transcript of Proceeding Jury Trial September 25, 26, and 27, 1989, p. 235 lines 1-3) (App. K). In her Report she reported of finding of seminal fluid was present and an ABO type was not determined on vaginal samples (Item 1) of Laurie Slagle. See (A copy of the DCI Lab Report by Jalene A. Griffin, p. 1 ¶ 3) (App. J). Since there was no ABO type determined on seminal fluid on the biological evidence kit of Laurie Slagle as State's Exhibit No. 2. There is no biological evidence that indicate Mr. Johnson as the person who had broke into her home and sexually assaulted her.

Therefore, Trial Court lacked jurisdiction over the subject matter (Johnson), and authority to render the particular judgment, which violated his constitutional right to due process of law, under the 14th Amendment to the United

States Constitution and of Article 1. §6 Wyoming Constitution.

The language of the 14th Amendment to the United States Constitution and of Article 1. §6 of Wyoming Constitution is unequivocal and clear. Both declare that no person shall be deprived of life, 'liberty' or property without due proceed of law. Holm v. State, 404 P.2d 740 742 (Wyo. 1965).

II.

THE SUPREME COURT OF WYOMING HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT OR HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT

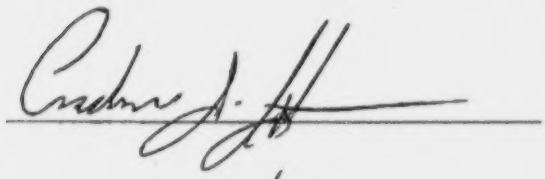
In re Nielsen, 131 U.S. 184, 9 Sup. Ct. 674, it is said; "A party is entitled to a habeas corpus, not merely where the court is without jurisdiction of the cause, but where it has no constitutional authority or power to condemn the prisoner.

By the Supreme Court of Wyoming denying a Constitutional claim in the context of a petition for habeas corpus (App. A), it denied Mr. Johnson his right to due process of law and equal protection of the laws.

CONCLUSION

The petition for an extraordinary writ of habeas corpus should be granted.

Respectfully submitted,



Date: 10/11/06

Supreme Court, U.S.
FILED

06-565 AUG 7 - 2006

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

In re ANDREW J. JOHNSON

_____

APPENDIX TO PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS OF JOHNSON

VOLUME

I

Andrew J. Johnson # 15223
P.O. Box 877
Haskell, TX 97521

IN THE SUPREME COURT, STATE OF WYOMING

ANDREW J. JOHNSON	)	
	)	IN THE SUPREME COURT
Petitioner,	)	STATE OF WYOMING
	)	***No. 06-97*** FILED
v.	)	MAY 16 2006
	)	JUDY PACHECO, CLERK
JILL WATSON, Warden , Rolling Plains Regional Detention Center; ROBERT O. LAMPERT, Director Wyoming Department of Corrections; and PATRICK CRANK, Wyoming Attorney General,	)	s/ Caral Thompson
	)	by DEPUTY
	)	
Respondents.	)	

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

This matter came before the Court upon a Petition for Writ of Habeas Corpus, filed herein May 1, 2006. After a careful review of the petition, the materials attached hereto, the "Motion to Dismiss Petition for Writ of Habeas Corpus," and the file, this Court finds that the petition should be denied. Petitioner makes no coherent or meritorious claim

"Appendix A"

that the district court lacked jurisdiction over the subject matter, over the person of the defendant, or to render the particular judgment. It is, therefore,

ORDERED that the Petition for Writ of Habeas Corpus, filed herein May 1, 2006, be and hereby is denied.

DATED this 16th day of May, 2006.

BY THE COURT:

s/ William U. Hill
WILLIAM U. HILL
Chief Justice

IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT

STATE OF WYOMING, COUNTY OF LARAMIE

DOCKET NO. 19-373

STATE OF WYOMING,	)	
	)	FILED
v.	)	MAR 28 2006
	)	GERRIE E. BISHOP
ANDREW J. JOHNSON,	)	CLERK OF THE DISTRICT COURT
	)	
Defendant.	)	

ORDER DISMISSING PETITION OF WRIT OF HABEAS CORPUS RELIEF AND REQUEST FOR SERVICE BY ANOTHER PERSON

THIS MATTER came before the Court upon Defendant's pro se Petition for Writ of Habeas Corpus Relief and Request for Service by Another Person. The Court, being fully advised, finds:

That petitioner's request is facially without merit and is dismissed with prejudice. The Petitioner argues that the District Court for the First Judicial District in Laramie County, Wyoming lacked jurisdiction over the subject

"Appendix B"

matter, and authority to render the particular judgment in the proceeding in State v. Johnson,Docket No. 19-373. Petitioner was convicted and sentence on October 20, 1989.

petitioner argues that the District Court lacks jurisdiction since Petitioner no longer is physically in the jurisdiction of the State of Wyoming and is now being housed in the State of Texas at the Rolling Plains Regional Detention Center.

WYO. CONST. art. V, § 5 states in relevant part that, "The district court shall have original jurisdiction of all causes both at law and in equity and in all criminal cases, of all matters of probate and insolvency and of such special case and proceedings as are not otherwise provided for." Thus, the District Court did have proper jurisdiction and authority to render particular judgment in the proceeding stated above.

Furthermore, the Request for Service by Another Person is denied. Should these unnecessary and often

Statute 6-3-301© (ii), 1977 Republished Edition and one count First Degree Sexual Assault as proscribed by Wyoming Statute 6-2-302 (a) (i), 1977 Republished Edition, and further having been found by the same jury of twelve (12) persons to be a person previously convicted four (4) times of a felony upon charges separately brought and tried, which arose out of separate occurrences either in this State or elsewhere;

AND, the Defendant, after having been accorded an opportunity to make a statement in his own behalf and present any information in mitigation of the punishment, was thereupon asked by the Court whether he had anything to say why judgment should not be pronounced against him; and the Defendant not having given any good or sufficient reason why judgment of the Court should not be pronounced, and the Court being fully advised on all matter pertinent herein;

AND the Court having considered probation in this matter and finding that it is inappropriate for this case;

IT IS FURTHER ORDERED that ANDREW J JOHNSON is guilty of the of the crimes charged in the Information filed herein and that he is an habitual criminal and he shall be sentenced pursuant to Wyoming Statute § 6-10-201(b) (ii), 1977 Republished Edition, to wit: that he be imprisoned and confined in the Wyoming State Penitentiary located at or near the city of Rawlins, Wyoming for the rest of his natural life; that during such confinement he be clothed, subsisted and treated in all respects in according with the rules and regulations governing said institution, there to be safely kept until the term of this sentence is fully complied with or until he shall have been sooner discharged in accordance with law.

IT IS FURTHER ORDERED that the Defendant shall pay to the Victim's Compensation Fund, as required by W.S. 12-40-119 (a), 1977 Republished Edition, the sum of $50.00 by cash, certified check or money order payable to

frivolous motions continue, the Court may be forced to sanction the Petitioner under W.R.C.P. 11.

IT IS THEREFORE ORDERED that the above named requests are DENIED.

Dated this 23 day of 3 2006.

s/s) EDWARD L. Grant
EDWARD L. GRANT
DISTRICT JUDGE

cc: District Attorney
Andrew Johnson

I hereby certify that I distributed a true and correct copy of the foregoing this ___ day of _____, 2006, as indicated. [M-mail; B-box in Clerk's Office, H-hand delivery; F-facsimile transmission.]

_____
Deputy Clerk/Judicial Assistant

STATE OF WYOMING COUNTY OF LARAMIE SS. CERTIFICATE

I Gerrie E. Bishop, Clerk of the District Court in and for Laramie County Wyoming, do hereby certify that the within and foregoing is a full true correct copy of the original thereof as the same appears on file or of record in my office and that the same is in full force and effect as of this date.

Witness my hand and seal of said court the 28 day of Mar. 20 06.
GERRIE E. BISHOP
Clerk of District Court
s/ By Sue Heiddee
Deputy

STATE OF WYOMING)
) ss:
COUNTY OF LARAMIE) IN THE DISTRICT COURT

FIRST JUDICIAL DISTRICT

Doc. 19 No. 373

THE STATE OF WYOMING,)
)
Plaintiff,) FILED
)
ANDREW J. JOHNSON,) OCT 25 1989
) GERRIE E. BISHOP
Defendant.) CLERK OF THE DISTRICT COURT

JUDGMENT AND SENTENCE OF THE COURT

THE ABOVE-NAMED DEFENDANT appearing before the Court this 20th day of October, 1989, with his attorney, David L. Serelson, for judgment and sentence after having been found guilty by a jury of twelve (12) persons of the crime charged in the Information herein, to wit: one count Aggravated burglary, as proscribed by Wyoming

"Appendix C"

the Clerk of the District Court, Third Floor, County building, Cheyenne, Wyoming,

IT IS FINALLY ORDERED that the Defendant be remanded to the custody of the Sheriff of Laramie County and by said Sheriff delivered to the Warden, keeper or proper Officer in charge of the Wyoming State Penitentiary in the manner and within the time required by law and that he be kept and detained by the Warden according to this Judgment and Sentence.

DATED THIS 25 day of October 1989.

s/ Nicholas G. Kalokathis
NICHOLAS G. KALOKATHIS, DISTRICT JUDGE

Approved as to Form:

s/ Jon R. Forwood
JON R. FORWOOD

David L. Serelson

STATE OF WYOMING COUNTY OF LARAMIE SS: CERTIFICATE
I Gerrie E. Bishop, Clerk of the District Court in and for Laramie County Wyoming, do hereby certify that the within and foregoing is a full true correct copy of the original thereof as the same appears on file or of record in my office and that the same is in full force and effect as of this date.
Witness my hand and seal of said court the 25th day of October 1989
GERRIE E. BISHOP Clerk of District Court
s/ By Patricia Vubon
Deputy